

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-HC-2158-D

UNITED STATES OF AMERICA,)
Petitioner,) JOINT PROPOSAL FOR
) ACCEPTANCE OF MOTION
v.) FOR COMMITMENT
)
KENDRICK R. DOUGLAS,)
Respondent.)

The parties, by and through their respective counsel, were ordered by the Court to provide a joint proposal of the procedure on how this matter should come to conclusion. [D.E. # 37].

The parties request that the Court question the respondent to determine overall competency to make a motion for commitment under 18 U.S.C. § 4248 and the voluntariness of this request. In doing this, the parties propose that the Court ask the following questions:

- (1) Does the respondent understand that he is currently pending certification as a sexually dangerous person pursuant to 18 U.S.C. § 4248, also known as the Adam Walsh Act?
- (2) Will the government representative provide a proffer as to what it contends would provide a factual basis for civil commitment?
- (3) Does the respondent understand what the factual basis of the civil commitment certification would be if the respondent

elected to exercise his right to a hearing?

(4) Is anything untrue within the proffer of the government?

(5) Is there anything within the government's proffer that the respondent would like to say is untrue?

(6) Is the respondent under the influence of any medication which would impact the voluntariness of his actions?

The parties propose that the Court inform the respondent of, and determine that the respondent understands the following, prior to the acceptance of a motion to accept civil commitment.

(1) The government's right to use against the respondent, any statement that the respondent gives under oath.

(2) The respondent's right to be represented by counsel -- and if necessary have the Court appoint counsel -- at every other stage of the proceeding.

(3) The respondent's right to a hearing, before a United States District Court, pursuant to 18 U.S.C. § 4247(d), to determine if the respondent is a sexually dangerous person under 18 U.S.C. § 4248.

(4) At a hearing the government must prove, by clear and convincing evidence, the following elements:

a) the respondent engaged in or attempted to engage in sexually violent conduct or child molestation; and

b) the respondent suffers from a serious mental illness, abnormality or disorder as a result of which he would have

serious difficulty refraining from sexually violent conduct or child molestation.

(5) The respondent's right to confront and cross-examine adverse witnesses, to testify and present evidence, and to compel the attendance of witnesses at the hearing.

(6) The respondent's waiver of these rights, if the Court accepts the respondent's request to be committed pursuant to 18 U.S.C. § 4248.

(7) If committed, the respondent has the right move the Court for a hearing to determine whether the respondent should be discharged from commitment 180 days after the Court's determination of commitment, pursuant to 18 U.S.C. § 4247(h).

(8) Should the respondent file a motion for release for commitment under 18 U.S.C. § 4247(h) after 180 days, the respondent would bear the burden of proof that the respondent should be discharged from commitment.

(9) Has the respondent discussed the impact and consequences of his motion for commitment with his counsel?

(10) Has the respondent had enough time and opportunity to discuss this case with his counsel?

(11) Is the respondent satisfied with his counsel's advice?

(12) Has anyone forced the respondent to make this motion, and is the respondent making this motion on his own free will and without coercion?

(13) Has anyone made any promises to the respondent in an attempt to get the respondent to move for civil commitment?

(14) Is respondent's counsel satisfied that his client has knowingly and voluntarily made this decision?

The parties request that this matter be set for the first available date in the Court's October term.

Counsel for the respondent has reviewed this proposal, concurs with the content, and consents to its filing as a joint motion.

Respectfully submitted this 15th day of November, 2011.

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been served upon Mitchell G. Styers, counsel for the respondent, by electronically filing the foregoing with the Clerk of Court this date, November 15, 2011, using the CM/ECF system which will send notification of such filing above.

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